

Collateral Consequences in Occupational Licensing Act.
(CCOLA)
Model Legislation
January 31, 2019

A bill for an act
to reduce offenders' disqualifications from occupational regulations; to provide a pre-
recognition petition regarding the same; and proposing coding for new law as _____,
chapter _____.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

100.01 Definitions.

Subdivision 1. **Scope.** For the purposes of this chapter, the words defined in this section have the meaning given.

Subd. 2. **Government certification.** "Government certification" means a voluntary, government-granted, and nontransferable recognition to an individual who meets personal qualifications related to a lawful occupation. Upon the government's initial and continuing approval, the individual may use "government certified" or "state certified" as a title. A non-certified individual also may perform the lawful occupation for compensation but may not use the title "government certified" or "state certified." In this chapter, the term "government certification" is not synonymous with "occupational license." It also does not include credentials, such as those used for medical-board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.

Subd. 3. **Lawful occupation.** "Lawful occupation" means a course of conduct, pursuit or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

Subd. 4. **Occupational license.** "Occupational license" means a nontransferable authorization in law for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform the occupation for compensation.

Subd. 5. **Occupational regulation.** "Occupational regulation" means a statute, rule, practice, policy, or other state law that allows an individual to use an occupational title or work in a lawful occupation. It includes a government certification and occupational license. It excludes a business license, facility license, building permit, or zoning and land use regulation except to the extent those state laws regulate an individual's personal qualifications to perform a lawful occupation.

Subd. 6. **Personal qualifications.** “Personal qualifications” are criteria related to an individual’s personal background and characteristics. They may include one or more of the following: completion of an approved educational program, satisfactory performance on an examination, work experience, apprenticeship, other evidence of attainment of requisite skills or knowledge, criminal record and completion of continuing education.

Subd. 7. **State recognition.** “State recognition” means the government’s grant or renewal of an occupational title or authorization to work in a lawful occupation. It includes government certification, an occupational license and other recognition of an individual’s personal qualifications.

100.02 Fundamental right. The right of an individual to pursue a lawful occupation is a fundamental right.

100.03 Review of a Criminal Record.

Subd. 1. **Application.** Notwithstanding any other law, a board, agency, department or other state agency (hereafter “board”) will use only this chapter to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition because of a criminal conviction.

Subd. 2. **No automatic bar.** A board will not automatically bar an individual from state recognition because of a criminal record but will provide individualized consideration.

Subd. 3. **Information from a criminal record to be considered.** A board may consider only a conviction of a non-excluded crime that is a felony or violent misdemeanor.

Subd. 4. **Excluded information from a criminal record.** A board will not consider:

1. non-conviction information from the criminal justice system including information related to a deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;
2. a conviction for which no sentence of incarceration can be imposed;
3. a conviction that has been sealed, dismissed, expunged or pardoned;
4. a juvenile adjudication;
5. a non-violent misdemeanor; or
6. a conviction that occurred more than three years before the date of the board’s consideration except for a conviction of:
 - a. a felony crime of violence pursuant to statute section _____;

- b. a felony related to a criminal sexual act pursuant to statute section _____; or
- c. a felony related to a criminal fraud or embezzlement pursuant to statute section _____.

Subd.5. Included information. The board will consider the individual's current circumstances including:

1. the age of the individual when the individual committed the offense;
2. the time since the offense;
3. the completion of the criminal sentence;
4. a certificate of rehabilitation or good conduct;
5. completion of, or active participation in, rehabilitative drug or alcohol treatment;
6. testimonials and recommendations including a progress report from the individual's probation or parole officer;
7. other evidence of rehabilitation;
8. education and training;
9. employment history;
10. employment aspirations;
11. the individual's current family responsibilities; and
12. other information that the individual submitted to the board.

Subd. 6. Hearing. The board will hold a public hearing, should the individual request one, pursuant to section _____ of the state's administrative procedure act.

Subd. 7. **Totality of the circumstances test.** (a) The board may deny, diminish, suspend, revoke, withhold or otherwise limit state recognition only if the board determines:

1. the state has an important interest in the regulation of a lawful occupation that is directly, substantially and adversely impaired by the individual's non-excluded criminal record as mitigated by the individual's current circumstances in subdivision 5, and
2. the state's interest outweighs the individual's fundamental right to pursue a lawful occupation.

(b) The board has the burden of making its decision by clear and convincing evidence.

Subd. 8. **Rule of lenity.** (a) An ambiguity in an occupational regulation relating to a board's use of an individual's criminal record will be resolved in favor of the individual.

(b) The board will not use a vague term in its consideration and decision including:

1. good moral character;
2. moral turpitude; or
3. character and fitness.

Subd. 9. **Appeal.** The individual may appeal the board's decision as provided for in section _____ of the state's administrative procedure act.

100.04. Petition for Board Determination Prior to Obtaining Personal Qualifications.

Subd. 1. **Petition.** An individual with a criminal record may petition a board at any time, including before obtaining any required personal qualifications, for a decision whether the individual's criminal record will disqualify the individual from obtaining state recognition.

Subd. 2. **Content.** The individual will include in the petition the individual's criminal record or authorize the board to obtain the individual's criminal record.

Subd. 3. **Determination.** The board will make its decision using the criteria and process in section 100.03.

Subd. 4. **Decision.** The board will issue its decision no later than 60 days after the board receives the petition or no later than 90 days after the board receives the petition if a hearing is held. The decision will be in writing and include the criminal record, findings of fact and conclusions of law.

Subd. 5. **Binding effect.** A decision concluding that state recognition should be granted or granted under certain conditions is binding on the board in any later ruling on state

recognition of the petitioner unless there is a relevant, material and adverse change in the petitioner's criminal record.

Subd. 6. **Alternative advisory decision.** If the board decides that state recognition should not be granted, the board may advise the petitioners of actions the petitioner may take to remedy the disqualification.

Subd. 7. **Reapplication.** The petitioner may submit a revised petition reflecting completion of the remedial actions before a deadline the board sets in its alternative advisory decision.

Subd. 8. **Appeal.** The petitioner may appeal the board's decision as provided for in section _____ of the state's administrative procedure act.

Subd. 9. **Reapply.** The petitioner may submit a new petition to the board not before one year following a final judgment on the initial petition or upon obtaining the required personal qualifications, whichever is earlier.

Subd. 10. **Cost.** The board may charge a fee to the petitioner to recoup its costs not to exceed \$100 for each petition.

100.05 Reporting. (a) The Department of _____ will establish an annual reporting requirement of the:

1. number of times that each board acted to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition from a licensed individual because of a criminal conviction;
2. offenses for which each board acted in subparagraph 1;
3. number of applicants petitioning each board under section 100.04,
4. numbers of each board's approvals and denials under section 100.04,
5. offenses for which each board approved or denied petitions under section 100.04, and
6. other data the Department determines.

(b) The Department will compile and publish annually a report on a searchable public website.

100.06 Limitation. Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.

100.07 Effective date. This chapter is effective on _____.

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